

**In The Matter Of:**  
*Hodell-Natco Industries, Inc. v.*  
*SAP America, Inc., et al.*

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*Otto Reidl*  
*Vol. 1*  
*February 7, 2012*

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UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

HODELL-NATCO ) Case No. 1:08 CV 2755  
INDUSTRIES, INC., )  
 ) Judge: Lesley Wells  
Plaintiff, ) Magistrate Judge:  
 ) Greg White  
vs. )  
 ) VOLUME I  
SAP AMERICA, INC., et )  
al., )  
 )  
Defendants. )

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THE VIDEOCONFERENCE DEPOSITION OF OTTO REIDL

DATE: Tuesday, February 7, 2012

TIME: 9:57 a.m.

PLACE: Reminger & Reminger  
1400 Midland Building  
101 Prospect Avenue, West  
Cleveland, Ohio 44115

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1 A. I don't know for sure.

2 Q. Okay. You go on in this  
3 paragraph 13 to conclude, thus, SAP's  
4 "partners" are agents of SAP, having assented  
5 to act on behalf of and subject to the control  
6 of SAP.

7 Is it correct that Hodell presently takes  
8 the view that SAP business partners were the  
9 actual agents of SAP?

10 MR. LAMBERT: Objection.

11 BY MR. STAR:

12 Q. You can answer.

13 MR. LAMBERT: It's a legal -- agents is  
14 a legal term that was inserted in the  
15 complaint. Obviously if you can testify as to  
16 your layman's understanding of the  
17 relationship between SAP and its business  
18 partners, then you can do so.

19 THE WITNESS: Could you repeat that  
20 question again, please?

21 BY MR. STAR:

22 Q. Sure.

23 A. I'm sorry.

24 Q. You agree with me that Hodell  
25 contends in this litigation that LSi was

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1 acting as the "agent" of SAP America and SAP  
2 AG when it was marketing Business One to  
3 Hodel, correct?

4 A. Correct.

5 Q. Okay. And what you say here is  
6 that, in paragraph 13, that they're acting --  
7 LSi is acting on behalf of and subject to the  
8 control of the SAP Defendants. Do you see  
9 that?

10 A. Yes.

11 Q. What evidence do you have that  
12 LSi was acting on behalf and subject to the  
13 control of SAP?

14 A. The literature that I mentioned  
15 earlier, that they are one in the same.  
16 They're a team.

17 Q. And by the literature, you're  
18 talking about the SAP Solution Brief that's  
19 mentioned in this paragraph 13?

20 A. No, because this references  
21 All-in-One, instead of Business One.

22 Q. Okay. So what literature are you  
23 referring to?

24 A. Some of the other exhibits that  
25 we have provided.

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1 Q. Can you identify any one  
2 specifically?

3 A. I don't have them with me.

4 Q. Other than the literature, is  
5 there anything else, any other information  
6 that you have, that led Hodell to believe that  
7 SAP -- that LSi was acting on behalf of and  
8 subject to the control of the SAP Defendants?

9 A. The business partner agreement.

10 Q. What document is that you're  
11 referring to?

12 A. LSi stated to us they were a  
13 business partner chosen by SAP America to  
14 provide vertical integration capability into  
15 the fastener industry, fastener distribution  
16 market.

17 Q. When you say LSi represented that  
18 to you, who from LSi made that representation?

19 A. Dale Van Leeuwen of IBiS.

20 Q. When was that representation  
21 made?

22 A. Sometime in 2003, late in 2003,  
23 or early in 2004.

24 Q. You mentioned a business partner  
25 agreement. Did you actually see a document

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1 Q. Sure. You mentioned that you had  
2 a conversation with Mr. Van Leeuwen in late  
3 2003 or early 2004.

4 A. Correct.

5 Q. Okay. What did Mr. Van Leeuwen  
6 relate to you during that conversation?

7 A. He indicated that he had explored  
8 possible software alternatives for us for the  
9 replacement of FACTS. He had come up with SAP  
10 Business One, and we had told him, I told him  
11 that we ourselves had done some work and were  
12 taking a look at SAP Business One in that  
13 time.

14 Q. Mr. Van -- for whom was  
15 Mr. Van Leeuwen working in late '03, early  
16 '04?

17 A. I believe at that time, it was  
18 his own company, IBiS.

19 Q. How many different software  
20 products did IBiS distribute at that point in  
21 time, if you know?

22 A. I think they were a reseller for  
23 FACTS, TakeStock, another product from  
24 Software Solutions and SAP Business One.

25 Q. So they were not an exclusive

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1 the office and in the warehouse, to streamline  
2 the warehouse management and accounting  
3 system, synchronization, to provide some of  
4 the other ancillary capabilities, EDI, faxing  
5 of invoices, emailing of invoices, and  
6 generally linking to an office cap --  
7 Microsoft capability.

8 Q. What efforts did Hodell undertake  
9 in 2003 to search for a new software product?

10 A. It actually started well before  
11 that. In 1998, one of our IT people and I  
12 visited Prophet 21 headquarters in  
13 Pennsylvania.

14 Q. Where in Pennsylvania are they?

15 A. I want to say Yardley.

16 Q. Okay.

17 A. We spent a day and a half  
18 reviewing the software. In '99, that same  
19 individual and I visited the Software Solution  
20 headquarters in Georgia to take a look at  
21 TakeStock, their Windows version.

22 Q. Take, T-A-K-E?

23 A. T-A-K-E.

24 Q. Okay.

25 A. S-T-O-C-K.

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1 Q. TakeStock. Okay.

2 A. At that time, the company that  
3 owned it was called Software Solutions. It's  
4 now called Infor, I-N-F-O-R.

5 In 2000, that same individual and I  
6 visited Computer Insights' headquarters in  
7 Chicago owned by Denny Cowhey. We spent a day  
8 and a half reviewing that software.

9 In 2002, we -- Kevin, Mark and I, spent  
10 -- Mark Betts, the individual who had traveled  
11 with me to the other locations -- spent three  
12 days at IBiS facilities in Illinois, suburb of  
13 Chicago, reviewing TakeStock again.

14 Q. At that point in time, IBiS was a  
15 distributor of TakeStock?

16 A. Yes.

17 Q. Did you review Business One  
18 during that meeting with IBiS in 2002?

19 A. Not at that time. And then in  
20 2002, we also had another session with P21.

21 Q. Also in Yardley?

22 A. In -- no. In -- in our offices.

23 Q. Who from P21 came to your office  
24 in 2002?

25 A. Krentz, I believe is his name.

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1 Q. Was the last name, Krentz?

2 A. Krentz, K-R-E-N-T-Z. I believe  
3 that's his name.

4 Q. Was that the same individual you  
5 had met with in 1998?

6 A. No. No. No. We actually were  
7 at their headquarters. We had a dem -- day  
8 and a half demonstration with very -- a whole  
9 group of people.

10 Q. Okay. All right. So you  
11 mentioned in 2002, P21 and this fellow named  
12 Krentz came to Ohio to meet with you. Any  
13 other efforts?

14 A. Yes. We also looked at IST --

15 Q. When was that?

16 A. -- and Navision.

17 Q. When was that?

18 A. A number of times at -- at --  
19 primarily at the fastener trade show in  
20 Nevada --

21 Q. So you --

22 A. -- where I spent a number of  
23 hours at their booth in demonstrations. And  
24 at one time, they also came to visit us in our  
25 offices. I do not recall the specific time.

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1 Q. Okay. You said it was IST?

2 A. IST, Information System

3 Technologies.

4 Q. And --

5 A. It's -- the acronym is IST.

6 Q. Okay.

7 A. Yeah. They're a provider of a

8 software-related package for the fastener

9 industry.

10 Q. Okay. And I think you said

11 something to the effect of Navision?

12 A. Navision, yes.

13 Q. How do you spell that?

14 A. That's another. N-A-V-I-S-I-O-N.

15 Q. Okay.

16 A. And the IST software is, I

17 believe, using the same operating system as

18 Navision, or related to it.

19 Q. Okay. Other than those, any

20 other meetings with any other software

21 companies?

22 A. Yes, three or four others that --

23 Q. You don't recall --

24 A. -- did not -- would not be in the

25 final ranking.

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1 Q. As of 2003, which vendors was  
2 Hodel1 considering, which software packages  
3 was Hodel1 considering during its search for  
4 software solution? Were all of these in the  
5 running, or had you narrowed the list down?

6 A. We had the list down to possibly  
7 a version of Navision, Navision I guess is the  
8 -- I'm not sure what the correct pronunciation  
9 is, and Computer Insights and P21, with P21  
10 probably being the highest ranking of those.

11 Q. Why was it the highest ranking?

12 A. Because of their extensive  
13 exposure to the fastener industry.

14 Q. Was -- when was the first time  
15 that Hodel1 started to consider Business One?

16 A. Early in 2003. There was a  
17 Microsoft-sponsored conference in Cleveland,  
18 downtown Cleveland, I believe in public hall,  
19 which I attended with one of our other  
20 employees. And at that facility, Navision was  
21 promoted, and I do not recall for certain if  
22 that's where I made a contact with American  
23 Express at a booth, but I recall getting a  
24 package of American Express in a clear plastic  
25 binder, SAP pen. And shortly after that, I

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1 were contracting with SAP in the development  
2 agreement?

3 A. Because we were dealing with the  
4 business partner.

5 Q. Okay. Well, let's look at the  
6 development agreement. It's Exhibit D to the  
7 complaint, sir.

8 A. Which is it again?

9 Q. D.

10 A. D?

11 Q. David.

12 A. Got it.

13 Q. This is the development  
14 agreement. It's a two-page document that  
15 makes up Exhibit D; is that correct?

16 A. Correct.

17 Q. You signed this document on  
18 December 20th, 2004 as the president of  
19 Hodell?

20 A. Correct.

21 Q. Okay. You read this document  
22 before you signed it?

23 A. Correct.

24 Q. Okay. Do you see anywhere in  
25 here that indicates that either SAP America or

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1 here for SAP America or SAP AG, correct?

2 A. Correct.

3 Q. Yet you understood at the time  
4 you signed this agreement, December 20, 2004,  
5 that Business One was a product owned by SAP,  
6 correct?

7 A. Correct.

8 Q. Why didn't you insist then that  
9 somebody from SAP -- strike that.

10 Why didn't you insist then that SAP  
11 America or -- and/or SAP AG actually be made a  
12 party to this agreement in December 2004?

13 A. Item 4 indicates that SAP has  
14 agreed that Hodell-Natco will receive 80 user  
15 licenses of SAP Business One for the balance  
16 of the payment.

17 Q. Okay. What led you to believe  
18 that SAP had actually made any agreement with  
19 Hodell?

20 A. This agreement.

21 Q. This --- this item in -- number 4,  
22 on page 2 of the development agreement, that's  
23 what you're referring to?

24 A. Correct.

25 Q. Okay. But, again, at this point

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1 employees limits a system, if they're not  
2 users.

3 Q. Okay. So prior to you looking  
4 for and finding information on the internet,  
5 which also occurred before December 23rd,  
6 2005, you're telling me it was Hodell's belief  
7 that Business One could support up to 500  
8 users?

9 A. We were told that.

10 Q. By whom?

11 A. By LSi and by American Express.

12 Q. Who at LSi told you that -- that  
13 Business One could support up to 500 users?

14 A. Dale Van Leeuwen.

15 Q. When did he tell you that?

16 A. December 3rd, 2003.

17 Q. How do you remember that date so  
18 specifically?

19 A. At that point -- at that meeting,  
20 I stated to American Express and Dale Van  
21 Leeuwen, who was on a teleconference with us,  
22 the other -- the American Express people were  
23 in our facility. We had a ten-year compounded  
24 growth rate at that point that was in excess  
25 of ten percent per year. We were -- if we

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1 continued that pace, in the next ten years, we  
2 would exceed 300 users, with productivity  
3 improvements promised, and all the literature  
4 that we had and efficiencies, 300 users would  
5 carry us. We did not want to be doing an  
6 implementation of software that would not be  
7 viable for the next decade. And I was assured  
8 by both parties that 300 users is -- the  
9 system is capable of supporting 300 users.

10 Q. Which --

11 A. I said I would not proceed unless  
12 that was -- assurance was made.

13 Q. Well, which was it, that  
14 Mr. Van Leeuwen told you it was 500 users or  
15 300 users?

16 A. He said he had information that  
17 indicated 500.

18 Q. Okay. What specific information  
19 did he tell you he had?

20 A. A SAP document.

21 Q. What SAP document?

22 A. I don't --

23 Q. Did you ask for that document?

24 A. We subsequent -- we had documents  
25 of our own that indicated that, 500 employees.

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1 Q. Okay. We're referring right now  
2 to a conversation that you had with  
3 Mr. Van Leeuwen on December 3rd, 2003, that  
4 also involved American Express, who you said  
5 was at your actual office?

6 A. Yes.

7 Q. Mr. Van Leeuwen was on a  
8 conference --

9 A. Yes.

10 Q. -- right?

11 A. Correct.

12 Q. Okay. Your testimony is that  
13 Van Leeuwen says during that conversation that  
14 Business One can support up to 500 users, and  
15 you also said, I believe, that Van Leeuwen  
16 referenced a document from SAP that had that  
17 information, right?

18 A. Correct.

19 Q. Okay. My question to you is, did  
20 you obtain that document from Mr. Van Leeuwen  
21 at any time prior to December 23rd, 2005?

22 A. I believe we already had such a  
23 document.

24 Q. You had a document that actually  
25 said Business One can support 500 users?

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1 A. It said 500 employees.

2 Q. Five hundred employees. Well,  
3 you just said earlier, sir, that you don't  
4 understand what the number of employees has to  
5 do with the number of users. What did you  
6 mean by that?

7 A. No. What I said was, nonuser  
8 employees have nothing to do with capacity,  
9 therefore, a logical assumption would be that  
10 the number of employees specified that define  
11 capacity of the system is users.

12 Q. I see. So when you would read in  
13 a document that Business One could support an  
14 organization up to 500 employees, you just  
15 assumed that that meant 500 users; is that  
16 right?

17 A. Correct.

18 Q. Okay. That's an awful big  
19 assumption to make without further  
20 investigating; wouldn't you agree?

21 A. I did investigate it.

22 Q. With whom?

23 A. I confronted SA -- American  
24 Express and IBiS, and asked for specific  
25 confirmation that it could handle 300 users.

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1 Q. And what did they give you as  
2 specific confirmation, sir?

3 A. It will handle 300 users.

4 Q. That's all they said?

5 A. Correct.

6 Q. Who said it?

7 A. I -- Dale Van Leeuwen said he had  
8 a document that talked about 500 users, but  
9 300 users was within the system capability.

10 Q. Well, I think you just said  
11 that Dale Van Leeuwen was referencing a  
12 document that said that it could handle up to  
13 500 employees, not users, correct?

14 A. At that time, he said users, but  
15 we had a document that said employees.

16 Q. But you just assumed that  
17 employees meant users, right?

18 A. That's a very logical assumption.

19 Q. You didn't actually contact  
20 anybody at SAP?

21 A. Yes, I did.

22 Q. An employee --

23 A. The SAP business partner.

24 Q. Let me finish the question. You  
25 did not actually contact any person employed

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1 IBiS would order the software? Did you just  
2 have no understanding of what they would do?

3 A. They would order 80 user  
4 licenses.

5 Q. Goes on to say that the -- the  
6 \$60,000 payment will be for 40 licenses of SAP  
7 Business One. The remaining \$60,000 purchase  
8 price balance for the 40 -- 41st through 80th  
9 license will be due on successful  
10 implementation. Do you see that?

11 A. Yes.

12 Q. Is there any mention in this  
13 document of the purchase of 40 additional CRM  
14 user licenses from SAP?

15 A. No.

16 Q. In fact, you understood that  
17 through the development agreement, one of the  
18 things that you were going to be paying IBiS  
19 or LSi to do was actually to purchase 80 user  
20 licenses of Business One from SAP, correct?

21 A. Correct.

22 Q. Okay. And that actually  
23 happened, right?

24 A. Yes.

25 Q. Okay. And the way that that

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1 happened was that you had -- Hodell had paid  
2 money to LSi or IBiS, and then LSi or IBiS  
3 actually paid money to SAP, after Hodell  
4 signed the license agreement in December 2005,  
5 correct?

6 MR. LAMBERT: Objection.

7 THE WITNESS: Correct.

8 BY MR. STAR:

9 Q. Okay. So Hodell, you would  
10 agree, actually did receive the user licenses  
11 that it thought it would receive from SAP,  
12 correct?

13 A. I'm sorry, could you repeat that  
14 question?

15 Q. Sure. You would agree then that  
16 Hodell actually received the user licenses  
17 that it had paid for from SAP, correct?

18 A. Right.

19 Q. Okay. Off the record for a  
20 second.

21 (Whereupon, an off-the-record  
22 discussion was held, and a lunch break was  
23 taken from 12:26 until 1:27.)

24 MR. STAR: Back on.  
25

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1 MR. LAMBERT: Can we go off the record  
2 for a second?

3 MR. STAR: Sure.

4 (Whereupon, an off-the-record  
5 discussion was held from 1:32 to 1:33.)

6 BY MR. STAR:

7 Q. Let's go back on the complaint,  
8 if we can, sir. Paragraph 18 of the complaint  
9 indicates that Hodell was provided with a  
10 document called the SAP Business One Brief.  
11 Do you see that?

12 A. Hold on a second, please.

13 Q. Sure.

14 A. One more page. Okay.

15 Q. You agree that this paragraph 18  
16 references a document called the SAP Business  
17 One Brief and alleges that Hodell was given  
18 that document sometime in 2003?

19 A. Correct.

20 Q. Okay. Do you know who gave that  
21 document to Hodell, sir?

22 A. It was probably American Express.

23 Q. Do you know when in 2003 you were  
24 given this document?

25 A. Not the specific time, no.

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1 Q. The document referenced is the  
2 document attached as Exhibit A to the  
3 complaint, correct?

4 A. I'm sorry?

5 Q. The document referenced in  
6 paragraph 18 is -- is the document that you  
7 have attached as Exhibit A to the complaint;  
8 is that right?

9 MR. HULME: Exhibit what?

10 MR. STAR: A.

11 MR. HULME: Oh, A.

12 THE WITNESS: Correct.

13 BY MR. STAR:

14 Q. Is there any statement or  
15 representation in this document that Hodell  
16 now contends constitutes a misrepresentation  
17 by SAP?

18 MR. LAMBERT: Objection.

19 THE WITNESS: When you describe a  
20 system capacity by number of employees and  
21 ~~don't state which ones are users and which~~  
22 ones aren't users, the only assumption you can  
23 make if you're defining capacity is that --  
24 are users.

25

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1 BY MR. STAR:

2 Q. Where are you referring to  
3 specifically in this document, sir?

4 A. Ten to several hundred employees.

5 Q. Okay. So you're looking at the  
6 second page of this business brief, first  
7 paragraph, upper left corner?

8 A. Correct.

9 Q. Yes? Where it says, the solution  
10 helps emerging businesses, from those with ten  
11 to several hundred employees, to streamline  
12 their operational and managerial processes?

13 A. (Witness nods head.)

14 Q. Yes?

15 A. Yes.

16 Q. Okay. So you believe that that  
17 statement was a misrepresentation by SAP?

18 A. Yes.

19 Q. What -- what information in that  
20 statement do you believe was incorrect or  
21 false?

22 A. It's misleading if you're  
23 defining a system capacity by using employees  
24 which are nonusers. It has no bearing on the  
25 capacity limitation. So if you're stating

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1 that it's a limitation, then you're saying  
2 users by inference.

3 Q. Were -- was Hodel mislled by that  
4 statement at the time it received the  
5 statement in 2003?

6 A. Yes.

7 Q. In what way?

8 A. That the user capacity is well  
9 above what we were starting with.

10 Q. What do you mean?

11 A. We're starting with 120 users.  
12 We bought 80 original licenses. We signed the  
13 agreement at the time. We ended up with  
14 supposed 120 users, when this stated there  
15 were several hundred.

16 Q. This -- you believe this stated  
17 in the first paragraph on the second page of  
18 this SAP Business One Brief, you believe that  
19 this stated that there were -- that the  
20 software could support several hundred users;  
21 is that correct?

22 A. Yes. Yes.

23 Q. Even though the word used is  
24 employees and not users, correct?

25 A. Employee has no bearing on the

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1 THE WITNESS: No.

2 BY MR. STAR:

3 Q. Paragraph 19 of the complaint  
4 discusses an event on October 1st, 2003, where  
5 you say that you personally received an email  
6 from Heather Devereuax, D-E-V-E-R-E-U-A-X,  
7 from -- I'll show it to you --  
8 biz2bizmarketing.com, containing attachments  
9 relating to SAP Business One, the American  
10 Express Edition.

11 What exactly did you receive from  
12 Ms. Devereuax?

13 A. They -- what is the document  
14 called, a white paper, I believe.

15 Q. And that's what's attached to  
16 your complaint as Exhibit B; is that right?

17 A. Let me take a look. Well, which  
18 exhibit is that?

19 Q. B.

20 A. E as in?

21 Q. B, as in boy?

22 A. B?

23 Q. Yes.

24 A. I believe that was the  
25 attachment.

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1 Q. Okay. What was  
2 biz2bizmarketing.com, if you know?

3 A. I don't know what her  
4 relationship is to American Express. I just  
5 received that document from her.

6 Q. Had you had prior contact with  
7 Ms. Devereaux that would have prompted her  
8 sending you this document?

9 A. Not that I recall. It may have  
10 been at a -- at a conference, the MI --  
11 Microsoft conference. I'm not positive.

12 Q. That's the conference you  
13 mentioned that took place here in Cleveland?

14 A. Yes. I don't know for sure if  
15 that's how she got my name.

16 Q. She attached to her email the  
17 document that you have here, which is -- has  
18 the title of the American Express Edition, is  
19 that right, this document that is behind her  
20 email --

21 A. Yeah.

22 Q. -- in Exhibit B?

23 A. Yes.

24 Q. Yes?

25 A. Yes.

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1 you contend that Ms. Vitantonio,  
2 V-I-T-A-N-T-O-N-I-O, of American Express sent  
3 you that document on October 16, 2003.

4 If you flip to Exhibit C of the complaint,  
5 is that the document you recall receiving on  
6 October 16th, 2003?

7 A. Which exhibit is that?

8 Q. C.

9 A. C. Correct.

10 Q. Okay. Is there any  
11 representation or statement in this document,  
12 this is the SAP Business One white paper  
13 attached as Exhibit C, that Hodell currently  
14 contends constitutes a misrepresentation  
15 either by American Express or SAP concerning  
16 the Business One software?

17 MR. LAMBERT: Objection.

18 THE WITNESS: Since we never  
19 implemented their software, I have no way of  
20 telling you.

21 BY MR. STAR:

22 Q. So to be clear, as we sit here  
23 today, Hodell does not believe that there is  
24 any information that was represented to it  
25 through Exhibit C to the complaint, that it --

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1 A. An excerpt from the document.

2 Q. What page of the document are you  
3 on, sir?

4 A. Page 2 -- page 6 maybe.

5 Q. You looking at Section 2 on page  
6 6, the first sentence?

7 A. I -- I'm referring to page 9 of  
8 the complaint, SAP Business One, the powerful  
9 solutions platform for small and medium-size  
10 business gives you fast and easy access to all  
11 corporate information.

12 Q. Okay. And you believe presently  
13 that that statement was a misrepresentation  
14 about the capabilities of Business One?

15 A. Yes.

16 Q. Why?

17 A. Because the system was incredibly  
18 slow.

19 Q. Did you take this at the time to  
20 be a representation about how this Business  
21 One system would perform for Hodell  
22 specifically?

23 A. Yes.

24 Q. Is it your testimony that when  
25 Hodell received this Business One white paper

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1 in 2003, that it actually relied on this  
2 particular statement?

3 A. We relied on the whole series of  
4 statements, from various meetings and  
5 documents, and you know, marketing information  
6 to help us make a decision.

7 Q. Okay. But right now I'm asking  
8 you about this statement, because you  
9 identified this as one you believe was false  
10 back in 2003. My question to you is, is it  
11 Hodell's position today that in 2003, it  
12 relied on this statement?

13 A. Not necessarily this particular  
14 document.

15 Q. Okay.

16 A. But that -- that kind of  
17 statement was in a number of documents.

18 Q. So that we're clear, is it your  
19 testimony now that Hodell did not rely on this  
20 particular statement at Section 2, page 6 of  
21 this Business One white paper that you have  
22 identified?

23 A. It is among a group of pieces of  
24 information we had to help us rely on this.

25 Q. I understand your testimony is

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1 presentation specifically for Hodell?

2 A. I do not recall.

3 Q. How did you register or sign up  
4 to participate in the webinar?

5 A. That's nine years ago. I do not  
6 remember.

7 Q. Okay. You say the demonstration,  
8 the webinar and demonstration was presented  
9 jointly by SAP, American Express and IBM.  
10 What evidence do you have that SAP  
11 participated in any way in the presentation of  
12 this webinar?

13 A. They were represented by their  
14 business partner, American Express.

15 Q. Okay. Was, to your knowledge,  
16 anybody actually employed by SAP involved in  
17 any way with this webinar?

18 MR. LAMBERT: Objection.

19 THE WITNESS: I don't know.

20 BY MR. STAR:

21 Q. Do you recall who did the  
22 speaking during this webinar?

23 A. I believe it was somebody from  
24 American Express. I do not know for certain.

25 Q. Was Hodell's name mentioned at

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1 vertical market space also included the  
2 integration of other software with SAP  
3 Business One, including the In-Flight  
4 Enterprise application and Radio Beacon  
5 synchronization. My question to you is, what  
6 did it mean to you at the time that there was  
7 going to be the In-Flight Enterprise  
8 application and Radio Beacon synchronization?  
9 What did you understand that to mean?

10 A. That is what makes it a viable  
11 product in the fastener distribution industry.

12 Q. That's -- that is what makes what  
13 a viable product, Business One?

14 A. SAP Business One.

15 Q. Your view, Hodell's view that --  
16 was that Business One by itself was not  
17 sufficient for Hodell's needs, correct?

18 A. Absolutely.

19 Q. Okay. And why?

20 A. Because it didn't have a  
21 warehouse management system, and it did not  
22 have the idiosyncrasies of the fastener  
23 distribution industry inherent in the base  
24 package.

25 Q. So what needed to be done to make

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1 Business One a suitable product for Hodell?

2 A. Basically, the adaptations as  
3 spelled out in the details of the In-Flight  
4 project.

5 Q. And when you say the In-Flight  
6 project, you're referring to the terms of the  
7 development agreement; is that right?

8 A. The development that was inherent  
9 that -- in that development agreement.

10 Q. Well, let's turn to that document  
11 again, sir. Again, that's Exhibit D to the  
12 complaint. It's D.

13 A. D.

14 Q. Development agreement shows,  
15 under the heading Project Description, that  
16 it's going to be the development of the IBiS  
17 Group's In-Flight Enterprise application and  
18 its integration into SAP Business One software  
19 for Hodell-Natco. Do you see that?

20 A. Yes.

21 Q. Okay. Was it your understanding  
22 that as of the date of this development  
23 agreement in December 2004, that the In-Flight  
24 Enterprise application did not even exist at  
25 that time, correct?

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1 A. Correct.

2 Q. Okay. And this was going to be a  
3 brand new application to be developed by  
4 IBiS/LSi for Hodell, correct?

5 A. Not absolutely.

6 Q. Okay. What is wrong with that  
7 statement?

8 A. Because IBiS had worked on the  
9 enhancements to FACTS to make it a product for  
10 use in the fastener industry, so they had  
11 extensive experience on the aspects of the  
12 fastener industry that needed to be  
13 incorporated in this, so it wasn't a complete  
14 start from scratch.

15 Q. Okay. Understood that your view  
16 there then is that IBiS or LSi would -- would  
17 already be hitting the ground running, because  
18 they had some experience working for Hodell in  
19 the past, correct?

20 A. Compared to somebody else  
21 starting from scratch.

22 Q. Right. But you would agree that  
23 they had to build this application essentially  
24 from the start, it didn't exist --

25 A. Correct.

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1 an implementation for Hodell, correct?

2 A. It was meant to be a -- a package  
3 for the vertical integration component of an  
4 add-on for SAP Business One, to give them  
5 access to the fastener industry.

6 Q. Okay. Let me ask my question  
7 again. Hodell understood that no company  
8 anywhere in the world had actually implemented  
9 SAP Business One with the In-Flight add-on as  
10 of December of 2004, correct?

11 A. Correct.

12 Q. And that's necessarily true  
13 because the In-Flight add-on simply did not  
14 exist at that time, correct?

15 A. Correct.

16 Q. And is it your testimony that the  
17 purpose -- part of the purpose in entering  
18 into the development agreement, was that you  
19 were trying to, in cooperation with LSi,  
20 develop an application that could be re-sold  
21 to other fastener companies like Hodell; is  
22 that right?

23 A. That they could resell.

24 Q. Well, that -- and Hodell would  
25 see some profit from that, correct?

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1           A.    Yes, because we're the ones  
2   taking the risk up front.

3           Q.    Okay.  So in other words, this  
4   was a joint venture between Hodell and LSi to  
5   develop this add-on, that could then be  
6   re-sold by LSi, to both the profit of LSi and  
7   Hodell, correct?

8           A.    Not a joint venture.  They were  
9   doing the development.  We bought the  
10   licenses.  We agreed to pay for those up  
11   front, so that they would have money to  
12   develop this for their marketing.

13          Q.    And if this application were  
14   successful, and it was then sold to other  
15   fastener companies, Hodell stood to gain from  
16   that, correct?

17          A.    Yes, for the first 100 users, I  
18   believe.

19          Q.    Okay.  And --

20          A.    First 500 users.

21          Q.    What did Hodell stand to gain  
22   from that?

23          A.    A reduction in the cost of our  
24   SAP licenses, by a refund.

25          Q.    How much of a refund?

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1           A.   Against a -- as a credit, I  
2 believe, against maintenance.

3           Q.   How much of a refund?

4           A.   Of \$200 per user, up to 500  
5 users.

6           Q.   So up to \$100,000?

7           A.   Correct.

8           Q.   What about if this was a  
9 tremendously successful product, and you sold  
10 -- or LSi was able to resell this In-Flight  
11 application to numerous different companies  
12 around the world, would it -- would Hodell  
13 have expected to see some profit from that?

14          A.   No.

15          Q.   Not at all?

16          A.   Not at all. You -- off the  
17 record, may I say something?

18          MR. HULME: Ask your lawyer.

19          THE WITNESS: Oh, okay.

20          MR. LAMBERT: We'll talk about that at  
21 a break.

22          THE WITNESS: The comment is we  
23 wouldn't benefit from another development, but  
24 the more people that use something, the  
25 stronger the product becomes, and you

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1 MR. LAMBERT: Just a continuing  
2 qualification that this is directed to Otto  
3 Reidl personally, and not as a representative  
4 of the company.

5 THE WITNESS: Right.

6 MR. LAMBERT: You can answer.

7 THE WITNESS: There were -- we had  
8 indication that SAP Business One had problems  
9 with other large add-ons, in file lockage and  
10 speed.

11 BY MR. STAR:

12 Q. Okay. So you're --

13 A. Through not -- verbal  
14 communication from SAP business partner.

15 Q. Okay.

16 A. Since confirmed in emails from  
17 SAP.

18 Q. My question is a little bit  
19 different though. Is there any particular  
20 aspect of SAP Business One that you believe  
21 caused a delay in the go live date? Or was  
22 that only -- did that only, that delay only  
23 occur because of the attempted integration  
24 with the In-Flight add-on?

25 A. The In-Flight add-on brought to

1 the surface some problems with applets, large  
2 applets in SAP Business One, with the DI API,  
3 the data interface.

4 Q. If all that Hodel was going to  
5 actually install was just Business One,  
6 without any add-ons, how long would that have  
7 taken?

8 MR. LAMBERT: Objection.

9 THE WITNESS: We never tested that. I  
10 have no way of confirming.

11 BY MR. STAR:

12 Q. You don't know if it would have  
13 taken a month or taken a year, right?

14 A. The implementation, meaning the  
15 day you first turn on the computer, or when  
16 you have it working?

17 Q. When you have it working. If all  
18 you were going to install was Business One by  
19 itself.

20 A. For 120 users, never, with our  
21 database.

22 Q. Okay.

23 A. Now, that's what I know now.

24 Q. Why do you say it would never  
25 work with your database?

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1 between 5 and 500 users. Do you see that?

2 A. Yes.

3 Q. Okay. You did not have this  
4 document, though, before you signed the  
5 license agreement, right?

6 A. Absolutely not.

7 Q. Okay. You don't even know who  
8 authored this document, correct?

9 A. At this point, I do not.

10 Q. Okay. Other than this document,  
11 are you aware of any other writing that states  
12 that Business One could support 500 users?

13 A. I need you to rephrase, repeat  
14 that question.

15 Q. Other than this document, are you  
16 -- are you aware of any other writing that  
17 states that Business One could support 500  
18 users?

19 A. We were advised by our LSi, IBiS  
20 business -- SAP Business One, the business  
21 partner, that they had documents that stated 5  
22 -- up to 500 users.

23 Q. I'm asking if you know of any  
24 particular document, other than this one, that  
25 you can identify that states that Business One

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1 Q. In paragraph 26, you say that on  
2 December 19th of 2003, at 3:30 p.m., you  
3 received a phone call from Vitantonio and  
4 Eric Worth. Was Mr. Worth also from American  
5 Express?

6 A. Correct.

7 Q. You go on to say here that it was  
8 expressly discussed, and left you with the  
9 assurance that SAP Business One had sufficient  
10 capability to serve a business the size of  
11 Hodell. What does -- what exactly was  
12 represented to you during that December 19,  
13 2003 phone call?

14 A. That it was scaleable up to our  
15 growth requirements for the next ten years.

16 Q. Did you specifically convey to  
17 Ms. Vitantonio, or Mr. Worth, the requirements  
18 of Hodell over the -- over the next ten years?

19 A. The requirement was spelled out  
20 to Ms. Vitantonio on the December 3rd meeting.

21 Q. And what exactly did you tell  
22 Ms. Vitantonio on December 3rd, 2003?

23 A. I spelled all that out before.

24 Q. It's the information you already  
25 testified to earlier?

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1 A. Correct.

2 Q. Did you tell her the number of  
3 users that Hodel expected to have?

4 A. I would like to know how many  
5 more times I'm supposed to answer this  
6 question.

7 Q. Did you tell her it, sir?

8 A. Yes.

9 Q. What did you say exactly?

10 A. I told her and Dale Van Leeuwen,  
11 who was on the extension, on the conference  
12 call, that our company had been growing at a  
13 compounded rate of in excess of ten percent  
14 per year for the previous ten years.  
15 Mr. Van Leeuwen was aware of that growth,  
16 because he was with us during that time. And  
17 based on our growth and user requirements, and  
18 our desire not to have to implement another  
19 software in the next decade, other than the  
20 one we're trying to choose now, that we would  
21 need 300 users. And I needed assurance before  
22 I go any further.

23 Q. But you never sent anything in  
24 writing to Ms. Vitantonio, or any of her  
25 colleagues at American Express, that conveyed

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1 about?

2 A. The amount of progress by the  
3 time that that payment was to be made.

4 Q. It's my understanding that you  
5 had to approve the progress that had been made  
6 before you would go live with the system?

7 A. Correct.

8 Q. What do you recall about that  
9 decision and the decision to go live with the  
10 system?

11 A. Again, I would have to defer to  
12 Kevin --

13 Q. Okay.

14 A. -- because he was into that day  
15 in, day out.

16 Q. Okay. Was your -- was it your  
17 recollection that when the decision was made  
18 to go live with it, it had been tested on a  
19 small number of users? Or do you know?

20 A. I believe so.

21 Q. Okay. And to your knowledge, was  
22 the entire package, the -- the Radio Beacon  
23 and the In-Flight and the SAP packaged, did it  
24 seem to be acceptable with the small number of  
25 users?